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05-04-04 Klemm 2
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

Applicant(s): Reinhard Klemm
Case: 2
Serial No.: 09/164,509
Filing Date: September 30, 1998
Group: 2152
Examiner: S. Willett

I hereby certify that this paper is being deposited on this date with the U.S. Postal Service as first class mail addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Signature: *Linda Short* Date: April 21, 2004

Title: Method and Apparatus for Prefetching Internet Resources Based on Estimated Round Trip Time

TRANSMITTAL OF REPLY BRIEF

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APR 29 2004

Technology Center 2100

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith are the following documents relating to the above-identified patent application:

(1) Reply Brief (original and two copies).

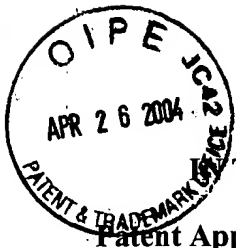
In the event of non-payment or improper payment of a required fee, the Commissioner is authorized to charge or to credit **Deposit Account No. 50-0762** as required to correct the error. A duplicate copy of this letter and two copies of the Reply Brief are enclosed.

Respectfully,

Kevin M. Mason

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Date: April 21, 2004



#21

Klemm 2

5-44

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

5 Applicant(s): Reinhard Klemm
Case: 2
Serial No.: 09/164,509
Filing Date: September 30, 1998
Group: 2141
10 Examiner: Stephan F. Willett

I hereby certify that this paper is being deposited on this date with the U.S. Postal Service as first class mail addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Signature *Linda Shaker* Date: April 21, 2004

Title: Method and Apparatus for Prefetching Internet Resources Based on Estimated Round Trip Time

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REPLY BRIEF

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P.O. Box 1450
20 Alexandria, VA 22313-1450

Sir:

Appellants hereby reply to the Examiner's Answer, mailed February 23, 2004, in an
25 Appeal of the final rejection of claims 1 through 29 in the above-identified patent application.

REAL PARTY IN INTEREST

A statement identifying the real party in interest is contained in Appellant's Appeal
Brief.

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RELATED APPEALS AND INTERFERENCES

A statement identifying the related appeals is contained in Appellant's Appeal Brief.

STATUS OF CLAIMS

A statement identifying the status of the claims is contained in Appellant's Appeal Brief.

STATUS OF AMENDMENTS

A statement identifying the status of the amendments is contained in Appellant's Appeal Brief.

SUMMARY OF INVENTION

A Summary of the Invention is contained in Appellant's Appeal Brief.

ISSUES PRESENTED FOR REVIEW

A statement identifying the issues present for review is contained in Appellant's Appeal Brief.

GROUPING OF CLAIMS

A statement identifying the grouping of the claims is contained in Appellant's Appeal Brief.

CLAIMS APPEALED

A copy of the appealed claims is contained in an Appendix of Appellant's Appeal Brief.

ARGUMENT

Independent claims 1, 17, and 25 are rejected under 35 U.S.C. §103(a) as being unpatentable over Horvitz et al. in view of Bryant et al.

In the Examiner's Response to Argument section, the Examiner notes that the Appellant asserts that "Horvitz actually teaches away from the present invention" and asserts that the Appellant "does not claim or substantiate" the claims. (Point 27) Independent claims 1, 25, and 27-29 require prefetching Internet resources *according to a descending order* of round trip times.

Support for this limitation can be found on page 3, lines 1-10, and page 10, lines 16-24, of the original specification.

In Point 27, the Examiner further asserts that requesting documents in the order of access times is secondary to a primary goal of reducing response times for certain desired pages and that the claims do not read on “this obvious secondary result.” Appellant notes that the order of requesting documents is *not* a secondary constraint but is critical to reducing response times in the context of the present invention. It also *cannot* be considered obvious since the prior art actually teaches away from this limitation.

In Point 28, the Examiner asserts that Horvitz’s use of the phrase “descending order” (col. 29, lines 39-40) contradicts the Appellant’s argument that the references do not teach the limitation of the present invention related to descending order. As outlined above and in the Appellant’s Appeal Brief, Horvitz clearly teaches away from the present invention by teaching to prefetch in ascending order of prefetch times. In fact, Appellants would refer to the Examiner’s citation of Horvitz to substantiate the claim that Horvitz teaches away from the current invention since further inspection will reveal that Horvitz is referring to a flux product in the citation, not the prefetch time.

In Point 31, the Examiner asserts that a “secondary issue is whether HTTP round trip times are obvious in light of the teachings of measuring round trip times based on the subject matter as a whole as would have been understood at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.” Appellant notes that the issues related to HTTP round trip times were thoroughly addressed in the Appellant’s Appeal Brief.

In Point 32, the Examiner asserts that patentability is not reasonable when based “broadly on HTTP round trip times based on past performance.” Appellant notes that patentability is appropriate since the prior art teaches away from the present invention and each of the claims have additional limitations beyond “HTTP round trip times based on past performance.”

In Point 33, the Examiner asserts that Bryant specifically teaches “the various components that comprise the ‘response time’ of a given HTTP request.” *None* of the references, however, disclose or suggest prefetching one or more Internet resources based on a descending order of estimated round trip times that is “based on an interval of time between a sending of an HTTP request and a receipt of a response to said HTTP request,” as required by each of the independent claims.

In Point 34, the Examiner asserts that a "round trip time is widely known at all OSI layers, as implied and inherent in the HEAD function." Appellant has presented extensive arguments in the Appeal Brief distinguishing the teachings of round trip times in the prior art and the utilization of round trip times in the context of the present invention.

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Conclusion

Thus, Horvitz et al., Bryant et al., Kunkel et al., Narayanaswami, or Vaid et al., alone or in combination, do not disclose or suggest prefetching one or more Internet resources based on a descending order of estimated round trip times that is "based on an interval of time between a sending of an HTTP request and a receipt of a response to said HTTP request," as required by each of the independent claims.

The rejections of the independent claims under section §103 in view of Horvitz et al., Bryant et al., Kunkel et al., Narayanaswami, and Vaid et al., alone or in any combination, are therefore believed to be improper and should be withdrawn.

The remaining rejected dependent claims are believed allowable for at least the reasons identified above with respect to the independent claims.

The attention of the Examiner and the Appeal Board to this matter is appreciated.

Respectfully,

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Date: April 21, 2004

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